

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

HY-KO PRODUCTS COMPANY,	)	Civil Action No. 5:08cv1961 (Lioi)
	)	
Plaintiff,	)	
	)	JUDGE LIOI
vs.	)	
	)	<b>HY-KO PRODUCTS COMPANY'S</b>
	)	<b>ESTIMATE OF ATTORNEYS' FEES</b>
THE HILLMAN GROUP, INC.,	)	
	)	
Defendant.	)	

Plaintiff Hy-Ko Products Company's ("Hy-Ko"), pursuant to the Court's Case Management Conference Scheduling Order of September 10, 2008, provides its estimate of attorneys' fees sought in this action. Hy-Ko is entitled to attorneys' fees under the "exceptional case" provision of 35 U.S.C. § 285.

Among the types of conduct which can form a basis for finding a case exceptional are willful infringement, inequitable conduct before the P.T.O., misconduct during litigation, vexatious or unjustified litigation, and the bringing of a frivolous suit. *Beckman Instruments, Inc. v. LKB Produkter AB*, 892 F.2d 1547, 1551 (Fed. Cir. 1989). In the present case, Hillman pursues its threat of infringement against Hy-Ko for the improper purpose of gaining an unlawful and unfair advantage in the marketplace. In addition, Hillman knows or should know that it accuses Hy-Ko of infringing an invalid patent, and accordingly, Hy-Ko further reserves the right to amend its declaratory judgment Complaint to assert a claim of inequitable conduct.

Moreover, in *Machinery Corporation of America v. Gullfiber AB*, 774 F.2d 467, 227 USPQ 368 (Fed. Cir. 1985), the Federal Circuit held that when a declaratory judgment action is brought against a patentee by an erroneously accused infringer, a court may consider whether the

patentee's threats were in good faith under 35 U.S.C. § 285. Preceding the present action, Hillman accused Hy-Ko of infringement of its '894 Patent in multiple letters, threatened and then filed an action in Arizona more than 2,000 miles from Hy-Ko's place of business where the district court held personal jurisdiction lacking, and now persists in asserting in this action that Hy-Ko's actions are *willfully* infringing. Hillman's prosecution of this case is without a good faith basis in fact or law, and thus Hillman's misconduct satisfies the "exceptional case" standard of 35 U.S.C. § 285.

Accordingly, Hy-Ko seeks attorneys' fees in the below estimated amount:

ATTORNEY FEES	COSTS
Preliminary Investigation and Filing Complaint \$100,000	Depositions \$40,000
Procedural Motions Practice \$ None Anticipated	Experts \$125,000
Discovery \$850,000	Witness Fees \$ 1,000
Dispositive Motions Practice \$100,000	Other \$60,000
Settlement Negotiations \$20,000	
Trial \$600,000	
<b>TOTAL FEES: \$1,670,000</b>	<b>TOTAL COSTS: \$226,000</b>

Respectfully Submitted,

/s/ Gary L. Walters  
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**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing was electronically filed on November 12, 2008. A copy of the same will be served on counsel of record by operation of the Court's electronic filing system. Parties may access this filing through the Court's electronic filing system.

/s/ Gary L. Walters  
*One of the Attorneys for Hy-Ko Products  
Company*